4 January 1978

Mr. William G. Miller
Staff Director
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Bill:

Thanks for the opportunity to comment on the draft legislation concerning national intelligence. The thoroughness and detail of the draft show remarkable depth of knowledge and insights about the world of intelligence.

I am concerned about the practical effects of some parts of the legislation. I have tried to think about the draft in terms of the viability of intelligence activities and of the workability of the tasks confronting intelligence personnel, assuming enactment.

First, with the oft-stated and explicit requirements for informing Congressional and Executive authorities about intelligence matters, there is real danger of inhibiting those individuals and organizations--foreign and domestic--that would be willing to form relationships with American intelligence. As the Select Committee knows, successful intelligence collection and counterintelligence often boils down to willingness to protect confidential relationships. The draft, to me foredooms the ability of our intelligence arms to insure that confidentiality. I do not of course imply that Congressional or Executive authorities can be counted on to leak or disclose sensitive information. But, potential cooperating sources and agents simply are not likely to run the risk of employment or association.

In this vein, too, I worry that the rather negatively-cast draft with its long lists of shalt-nots will inhibit the traditional ability of American intelligence to attract and hire bright young Americans for professional careers. Just glancing at the act and the countless internal rules and regulations that will result would be enough to paint a picture of stultifying restraints and of fears of vulnerability lest one of many lines be somehow violated. The overall effect of the draft, I fear, makes intelligence out to be unseemly and work for pariahs.

I have another problem with the detailed approach to legislation. Presumably, if every jot and tittle is not followed, someone is in violation of the law. A good example of my concern arises in Title I, Section 113, para (c) (3), p. 33 and para (d) (4), p. 34 of the draft. Meetings of the Operations Coordinating Committee are to be "formal," with all members or designees present or with absentee views registered in writing. All of these stipulations relate to advising the President. What happens if a President for reasons of his own should direct the undertaking of a special activity without benefit of the Committee? Does he break the law?

Second, if nevertheless the Congress in its wisdom insists on detailed treatment of intelligence in new law, there should be a due attention given to the need for protection of intelligence sources and methods. The draft makes no reference to this important matter. And in all the references to the need to inform various authorities, no responsibilities or restraints are assigned to the authorities in protecting these fragile essentialities.

Third, since my retirement I have given considerable thought to the position of the DCI. After having spent a good deal of my career in CIA working consciously to improve the authorities and powers of the DCI, I have come to the conclusion that this is not the ideal. The reason is a rather simple one: to the extent that the DCI is directed to tackle Community-wide coordination and budgets, to that extent he must lessen his tie with CIA. What is in need of special nurturing (and encouragement by the two Select Committees) is the institution of CIA as an independent, objective clearing-house of information and assessments and as a provider of services of common concern. I think there is a real danger of the Agency's dissolution or fragmentation unless there is a full-time CIA Director who concentrates on these objectives and who also serves as the government's principal substantive intelligence spokesman and adviser.

Under such a concept, there would be room for some senior intelligence authority who could be assigned a responsibility for resources, coordination and oversight.

Let me make this point as clear as I can, in other words: we have a long history of DCI's who have been told to be both CIA head and community coordinator. None has succeeded fully to date; the job may well

be un-doable. Meanwhile, CIA has lost lustre and effectiveness in the process. CIA needs the most effective possible control at the top, oversight from within and without, and to remain independent of policy processes. It will also have a continuing need to improve its performance, particularly in analysis and production. These, by themselves, are tall orders for one man, full-time. One man, part-time, willing to delegate but a few powers to a deputy, simply will not be able to hack it.

Section 110 of the draft permits Presidential flexibility in the deployment of the DNI and his deputy. This helps, but my preference would be for a clear-cut distinction to be made between the head of the CIA and the function of coordinating community-wide resources.

One last but major point. I note on page 35. para (g) that "appropriate Committees of the Congress" are to be informed of sensitive intelligence matters. I believe it is quite important to stipulate that the two Select Committees are the focal points of Congress for such reporting. The time has come to provide for wise but restricted handling of such information.

I have attached a brief list of specifics that relate to the draft.

Best regards.

Faithfully yours,

E. H. Knoche

Attachment

Attachment

Draft of Title I, National Intelligence Reorganization and Reform Act of 1977

1. Shouldn't Section 103 at least nod in the direction of citing the importance of protecting intelligence sources and methods from disclosure?

2. P. 17, para (12). Why is Congress singled out as a receiver of evaluations? They would be of equal if not greater value to Executive authorities as well.

3. Pp. 17-18, para (17). As I read this, it would seem to give the DNI the upper-hand in CI activities within the US. Surely this is not intended. Wouldn't it be better to make it clear that the AG is paramount in this area?

4. Among excerpts that would appear so explicit or detailed as to have the practical effect of severely limiting if not dooming foreign liaison and foreign agent associations are:

   P. 18, para (20)

   P. 32, para (c)(2). Though I agree with the basic intent to insure systematic consideration of consequences and alternatives.

   P. 35, para (g). I would restrict sensitive reporting to the two Select Committees, not to "appropriate Committees of the Congress." This is essential.

   P. 36, para (i).
   P. 37, para (j).
   Sec. 116, para(2). Does this require notification in true name?

   P. 62, para (k). Those awful words "fully" and "all" are seldom necessary.

   P. 63, para (p). Does the Congress really want to insist on notification of records destruction? This invades managerial responsibilities and will pervade foreign relationships. Why not let the DNI decide on whether the data to be destroyed is sufficiently sensitive to notify the Select Committees?

5. P. 20, para (29). Is it intended that all terminations be reported? Presumably the intent is to be informed of those involving abuses.

6. P. 20, para (30). I don't think this is possible so long as DNI remains head of CIA.

7. P. 33, para (3). The requirement that there be formal meetings with all in attendance is desirable but does it belong in law?

8. Section 115, page 40, para (c). This is an important point--one that encourages cooperation. It is buried rather deep in an otherwise negatively-cast section. I would make the point earlier.

9. P. 49, Section 121. Excellent and necessary.

10. P. 58, paras (1) and (2). A good job of making distinctions between information and action taken thereon.

11. P. 63, para (o). As stated, this is too broad and bound to cause unnecessary trouble.

12. P. 65. Not a word is said about who, outside of Congress (i.e., the President?), has a right to participate in a decision to publicize a Congressional report. Why not find a way around a Constitutional impasse?

Draft Title IV, CIA Act of 1977

1. I'm not sure that this adequately covers a CIA authority to conduct background security checks and investigations of applicants and contractors. Such authority needs to be invested.

2. P. 24, para (i). This strikes me as too stringent. The DNI should be given the right to use judgment rather than be directed by law to "insure" GC and IG access to "any information."

3. Section 412, p. 27. Is it the intent to deny CIA provision of technical equipment to the FBI? Surely there must be instances of "lawful intelligence activities" in such a provision. If so, it should have reference.

Draft Title III, NSA Act of 1977

General comment: So detailed as to risk disclosure of sensitive collection methods, in my judgment. It amounts to official governmental confirmation of intelligence activities traditionally (and I think wisely) best left unstated. Is it not possible to set classified guidelines and rules, in terms of Congressional oversight standards, to which intelligence authorities will be responsive?

Section 305, paras (a)(1) and (2), P. 7. Why explicitly require that a civilian NSA Director or Deputy Director have "cryptologic experience." This makes permanent and inflexible a requirement best left open. The times in the future might best require a manager-type from the outside.

P. 29, Section 312, para (a). This looks unwieldly to me. I do not know the purpose or intent of this.